

D E E P L Y R O O T E D

How Racial History Informs Oklahoma's Death Penalty



DEATH PENALTY INFORMATION CENTER

Nab Negro for Attacking Girl In an Elevator

A negro delivery boy who gave his name to the police as "Diamond Dick" but who has been identified as Dick Rowland, was arrested on South Greenwood avenue this morning by Officers Carmichael and Pack, charged with attempting to assault the 17-year-old white elevator girl in the Drexel building early yesterday.

He will be tried in municipal court this afternoon on a state charge.

The girl said she noticed the negro a few minutes before the attempted assault looking up and down the

Deeply Rooted: How Racial History Informs Oklahoma's Death Penalty

A report by the Death Penalty Information Center

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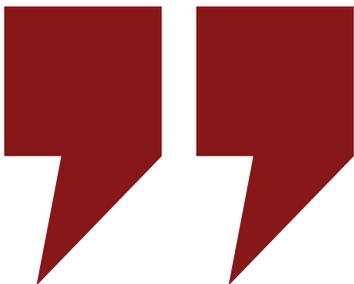
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...in our case the segregation based upon racial distinctions is in accord with the deeply rooted social policy of the State of Oklahoma.

McLaurin v. Okla. State Regents for Higher Ed.,
87 F. Supp. 528, 531 (W.D. Okla. 1949)





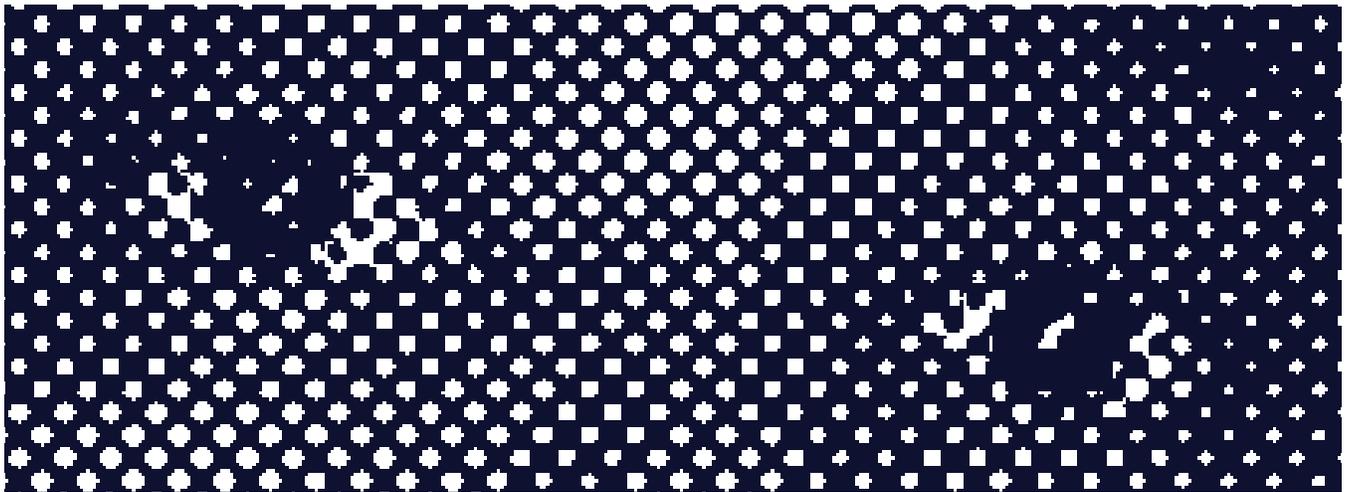
Oklahoma’s death penalty is at a crossroads. On August 25, 2022, Oklahoma executed the first person in a series of 25 executions set to occur nearly every month through 2024.¹ The projected increase in executions in Oklahoma comes while the death penalty is in decline nationwide; 2021 had the fewest executions since 1988.² Furthermore, Oklahoma’s planned executions are scheduled to move forward despite evidence that there are serious problems with Oklahoma’s death penalty that the state has done little to address.

Death penalty cases in Oklahoma have garnered significant media attention in recent years, providing the public with tangible examples of systemic issues with the state’s capital punishment system. Most recently, Richard Glossip’s case has been championed by more than 60 Oklahoma legislators—most of whom are Republicans—who believe he may be innocent.³ A recent report produced by more than 30 lawyers who spent 3,000 hours investigating

Glossip’s case found possible prosecutorial and police misconduct, inadequate defense lawyering, and facts inconsistent with the prosecutor’s version of events presented at trial. The report highlighted a number of facts that undermine Glossip’s conviction.⁴ No physical or forensic evidence ties Glossip to the crime, and recent discoveries have revealed that, at the direction of the Oklahoma County District Attorney’s Office, the Oklahoma City

Police Department destroyed boxes of evidence before Glossip's second trial.⁵ His conviction hinged primarily on the statements of a codefendant who received a reduced sentence in exchange for his testimony implicating Glossip.⁶ Glossip received a temporary stay of execution in August 2022 and is currently scheduled to be executed on December 8, 2022.⁷

witness who was given a substantially reduced sentence in exchange for his testimony. An arresting officer and a juror used racial slurs to describe Jones, reflecting the pervasive racial bias that permeated his case.⁸ After years of public pressure, Jones' sentence was commuted in 2021 to life without the possibility of parole.⁹ The Justice for Julius coalition is still fighting for his release.¹⁰



A coalition of diverse stakeholders brought Julius Jones' case to prominence by highlighting misconduct, racial justice issues, and his strong innocence claims. Jones, a Black man, was sentenced to death by a nearly all-white jury in 2002. He was prosecuted by a district attorney whose tenure was marred by misconduct, and his court-appointed trial lawyers did not investigate or present key evidence. As in Glossip's case, Jones' conviction relied heavily on a

These individual cases illustrate issues found in systemic reviews of the state's death penalty system. In 2017, a bipartisan commission that included former prosecutors, defense lawyers, judges, citizens, crime victim advocates, and law professors found that the state's capital punishment system created "unacceptable risks of inconsistent, discriminatory, and inhumane application of the death penalty."¹¹ In an extensively researched report, the commission

recommended a moratorium on executions until reforms were made. Five years later, Oklahoma has enacted “virtually none” of the suggested reforms.¹² Investigations into the state’s execution procedures have called into question Oklahoma’s ability to perform executions “with the precision and attention to detail” necessary.¹³ A grand jury investigating Oklahoma’s execution procedures following

An arresting officer and a juror used racial slurs to describe Jones, reflecting the pervasive racial bias that permeated his case.

Charles Warner’s execution and Richard Glossip’s near execution in 2015, in which the department of corrections obtained the wrong execution drug, found a multitude of serious problems with following the state’s legally mandated execution procedures. The grand jury discovered that most people involved in the execution process did not know what the protocol required. A pharmacist ordered the wrong execution drug, and no one completed the requisite checks to ensure the correct drug was ordered. And when, hours before Glossip’s scheduled execution, it was revealed that the execution team had obtained the wrong drug, the Governor’s General

Counsel encouraged the department of corrections to proceed with the execution without informing the public of the mistake.¹⁴ The grand jury report described these failures as shaking the confidence in the state’s ability to carry out the death penalty.¹⁵ Despite the lack of action on recognized problems with the state’s administration of the death penalty, Oklahoma has taken steps toward addressing other criminal legal reform issues. It is one of only ten states that has passed legislation to regulate jailhouse informants. It has also passed legislation to reform the use of eyewitness identification and to reduce the incidence of false confessions.¹⁶ Oklahoma legislators have (unsuccessfully) tried creating a Conviction Integrity Review Unit for death penalty cases that allows people on death row to present new evidence in their cases.¹⁷ Prior efforts show that reform is possible, but with two dozen executions looming, Oklahoma’s criminal legal system is facing an inflection point.

To understand Oklahoma’s present-day death penalty, it is important to understand the state’s history—particularly the legacies of racial violence and Jim Crow that have created deep-rooted racial tensions that persist today. Building upon the Death Penalty Information Center’s 2020 report, *Enduring Injustice*, this report explores the connections between Oklahoma’s racial history and its modern use of the death penalty.

Race and the death penalty in Oklahoma's early history

Present-day Oklahoma is made up of what in the 1800s was Indian Territory and Oklahoma Territory, and the first recorded execution occurred in 1841. In the 60 years that followed, 38 more people were executed for crimes, all involving murder. Of the 39 people executed in the 19th century, 31 (79%) were Native American men and 6 were Black men. The first recorded execution of a white person was in 1899.¹⁸ The racial makeup of Oklahoma's early executions reflected the area's demographics as it was primarily occupied by Native American nations.¹⁹

In addition to the Native American nations already residing in the territory, the Trail of Tears brought tens of thousands more Native Americans to Indian Territory as well as enslaved Black people.²⁰ After President Andrew Jackson signed the Indian Removal Act in 1830, members of the "Five Tribes"—the Choctaw, Muscogee (Creek), Cherokee, Seminole, and Chickasaw Nations—were forced to travel from their ancestral homelands in the southeastern United States to Indian Territory, which is the eastern half of present-day Oklahoma.²¹ During the 1830s and 1840s, an estimated 70,000 Native American people—about 7,000 of whom were enslaved Black people²²—traveled long distances, usually more than a thousand miles, on the Trail of Tears. They often traveled on foot with little food and water.²³ The Trail of Tears took the lives of thousands of Native Americans. Several hundred Choctaw and Muscogee (Creek) Indians died during the march; another 3,200 Muscogee (Creek) Indians died of disease, malnutrition, and exposure after their arrival; an additional one in four Cherokee Indians died, resulting in another 4,000 lives lost.²⁴ Two decades after their forced migration to Indian Territory, the outbreak of the Civil War divided the tribes. Four of the Five Tribes formally sided with the Confederacy. This may be because of their participation in the southern market economy and their slaveholdings. Geography was also an important factor as Indian Territory was bordered on the east and south by confederate states. There

were Union sympathizers in the territory, but they did not have the military forces to defend their allegiance.²⁵

The United States government promised Indian nations sovereignty in Indian Territory, but it did not last long. The Dawes Commission was formed in 1893 with the purpose of taking communally held Native land, creating individual allotments for tribal members and formerly enslaved Black people, and forcing Native American people to assimilate through the way they dressed, their values (e.g., embracing individuality instead of community), and their farming techniques.²⁶ After 13 years, the Dawes Commission closed its enrollment process after having taken 19,525,966 acres of land from the Five Tribes in Indian Territory.²⁷

The Trail of Tears brought tens of thousands more Native Americans to Indian Territory as well as enslaved Black people.



Native American Sovereignty

Native American sovereignty has been central to many death penalty cases in Oklahoma. For more than a century, the state routinely violated its treaty obligations by prosecuting people in state court for crimes committed on Native American land. Since 1972, at least three Native American men have been executed by the state for crimes committed on tribal land.²⁸

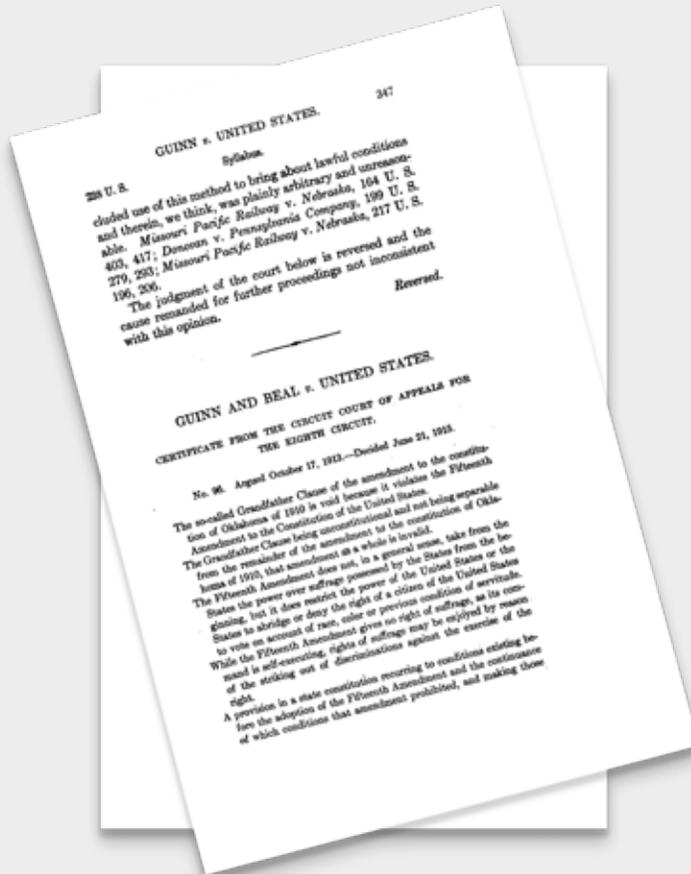
In 2014, Patrick Dwayne Murphy, a member of the Muscogee Nation, filed a habeas corpus petition in federal court challenging his death sentence on sovereignty grounds. Murphy argued that, because he is Indian and was charged with committing murder in Indian Country, the federal court had exclusive jurisdiction over his case and that his conviction and death sentence imposed in the Oklahoma state courts were void. The U.S. Court of Appeals for the Tenth Circuit vacated Murphy's death sentence in August 2017, holding that Oklahoma had no jurisdiction to try him in state court. State prosecutors appealed the ruling.²⁹

While Murphy's case was pending, the U.S. Supreme Court recognized Oklahoma's violation of tribal sovereignty in *McGirt v.*

Oklahoma. In *McGirt*, the Court held that Oklahoma was not permitted to prosecute Native American people for crimes committed on tribal lands. Further, it reaffirmed that much of eastern Oklahoma is, and always has been, Native land. The Court recognized that, by Oklahoma's admission, it had been ignoring treaties between Native American nations and the federal government that have existed since the 1800s.³⁰

McGirt initially bolstered Native American sovereignty, and on the same day it ruled in *McGirt's* favor, the Court retroactively applied its holding to Murphy's case, upholding the Circuit Court decision that had vacated his conviction and sentence.³¹ Murphy was subsequently tried in federal court and sentenced to life in prison without parole.³² Following *McGirt*, four additional people on Oklahoma's death row were granted relief for crimes committed in Indian Country. However, the Oklahoma Court of Criminal Appeals soon retreated from its prior rulings, refusing to retroactively apply the Supreme

Court's ruling to cases that had already completed direct appeal. As a result, those four death sentences were reinstated.³³



A 2022 Supreme Court decision further weakened a component of the *McGirt* ruling.³⁴ In *Oklahoma v. Castro-Huerta* the Court accepted Oklahoma’s argument that state and federal governments have concurrent jurisdiction over crimes committed by non-Native American people on Native land.³⁵ Calling Oklahoma’s assertion of jurisdiction a “power grab,” Justice Neil Gorsuch—who authored *McGirt*—argued in dissent that *Castro-Huerta* contravened centuries of precedent and “ignore[d] fundamental principles of tribal sovereignty, a treaty, the Oklahoma Enabling Act, its own state constitution, and Public Law 280.”³⁶

All Native American nations in the United States, except the Sac and Fox Nation in Oklahoma, have refused to give the federal government permission to pursue the death penalty for crimes on their land. Native American nations do not get similar input on state executions. Many Native Americans supported clemency for Julius Jones in 2020, decrying executions in Oklahoma that take place in a prison on Choctaw land.³⁸

Fawn Sharp addresses the National Congress of American Indians 76th annual convention in Albuquerque, New Mexico, after winning election as president of the organization on October 24, 2019.

Photo by Indianz.Com
(image used as black and white)



The Supreme Court’s decision today is an attack on tribal sovereignty and the hard-fought progress of our ancestors to exercise our inherent sovereignty over our own territories”

—National Congress of American Indians (NCAI) President Fawn Sharp.³⁷





The Black population in Oklahoma increased 115.5% between 1900 and 1910.

Unfortunately, with a rise in racial violence, lynchings, and racist laws, the prosperity of most Black towns declined over the years.

All-Black Towns

After the Civil War, freed Black people who had been enslaved by Native American nations created All-Black Towns. Between 1865 and 1920, more than 50 All-Black Towns were created, the greatest concentration in the nation.³⁹ These towns became centers of Black wealth, community support, and entrepreneurship. The town of Boley, described by Booker T. Washington as the “most enterprising and . . . interesting Negro town in the United States,” housed the first Black-owned bank to receive a national charter, giving it the ability to operate on the same level as white banks.⁴⁰ All-Black Towns gave rise to a network of influential Black newspapers including the *Oklahoma Guide*, *Oklahoma Black Dispatch*, and *The Langston Herald*. The early purpose of these newspapers was to advertise All-Black towns to Black people in the Deep South, presenting Oklahoma as an opportunity to escape oppression.⁴¹ Between a series of land runs and advertisements from the Black press, the Black population in Oklahoma increased 115.5% between 1900 and 1910.⁴² Unfortunately, with a rise in racial violence, lynchings, and racist laws, the prosperity of most Black towns declined over the years.⁴³



BEAUTIFUL
INDIAN TERRITORY
ILLUSTRATED

Tullehassee Manual Labor School,
April, 1891.

BY J. F. STANDIFORD
THE PHOTOGRAPHER AT
MUSKOGEE

Mass Racial Violence

There have been many instances of mass violence directed at Black people in Oklahoma. In the early 1900s, large groups of white people would gather for “whipping parties” in which they whipped or beat Black people suspected of committing a crime. According to Oklahoma Governor Jack Walton, there were 2,500 whippings in 1922 alone. Near the turn of the 20th century, race riots occurred in nearly a dozen communities in Oklahoma including Carter, Comanche, Muskogee, Okmulgee, and

Washington counties. There is little information available about these disturbances, but it is believed that the race riots in Okmulgee and Washington counties were instigated by white people burning down Black residential districts and establishing sundown laws (i.e. ordinances that made it illegal for Black people to be in town after sunset).⁴⁴ The most widely known instance of mass racial violence in Oklahoma happened in Tulsa.

Tulsa Massacre

The Tulsa Massacre started on May 31, 1921, and in less than 24 hours, white Tulsans burned down 35 blocks of Greenwood, a prosperous Black neighborhood.⁴⁵ This destruction happened under the pretense that a Black man had assaulted a white woman.⁴⁶ White Tulsans were actually reacting to the increased economic competition and social status of the Black community resulting from the success of “Black Wall Street.”⁴⁷ Over 1,200 homes and 60 businesses were destroyed and looted; at least 300 people were killed with hundreds more injured; and 8,000 to 10,000 people were left homeless.⁴⁸ At best, the police did nothing to stop the violence; some reports suggest police participated in the destruction of Greenwood.⁴⁹ After the neighborhood was destroyed, police and deputized white citizens forced Black people into an internment camp. They were not permitted to leave without the permission of white employers. Many Black people lived in the internment camp for months, sleeping in tents. Most of the people indicted after the riot were Black.⁵⁰

The property damage totaled \$27,000,000 in 2021 dollars, and the Black community was routinely blocked from recapturing the money needed to rebuild.⁵¹ Efforts to obtain compensation from the courts and insurance companies were denied. The Tulsa City Commission established a new ordinance that restricted building heights and materials, complicating and effectively prohibiting Black residents from rebuilding their homes and businesses.⁵² (The ordinance was later deemed unconstitutional.)⁵³ White community leaders in Tulsa considered further displacing Black residents by buying the land for either an industrial district or new railroads that a business leader suggested



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would “draw more distinctive lines between them and thereby eliminate the intermingling of the lower elements of the two races ... the root of all evil which should not exist.”⁵⁴ Despite these barriers, Greenwood residents had modest success in rebuilding in the 1930s and '40s. But the community's recovery continued to be hindered by redlining; exclusionary zoning; and “urban renewal” that justified forced relocation, demolition, and splitting the area between new highways.⁵⁵

The effects of the Tulsa Massacre are still evident in present-day Tulsa. North Tulsa used to be a symbol of Black wealth. Now, North Tulsa, home to about half of Tulsa's Black population, is 2.5 times more impoverished than South Tulsa, which is predominantly white.⁵⁶ Communities in North Tulsa are more heavily policed, and Black Tulsans are 2.7 times more likely to be subjected to physical force by police officers.⁵⁷ There are also drastic racial differences in life expectancies, educational attainment, and access to fresh food.⁵⁸ Over a century later, the last known survivors of the Tulsa Massacre are continuing their fight for reparations.⁵⁹

Lynchings

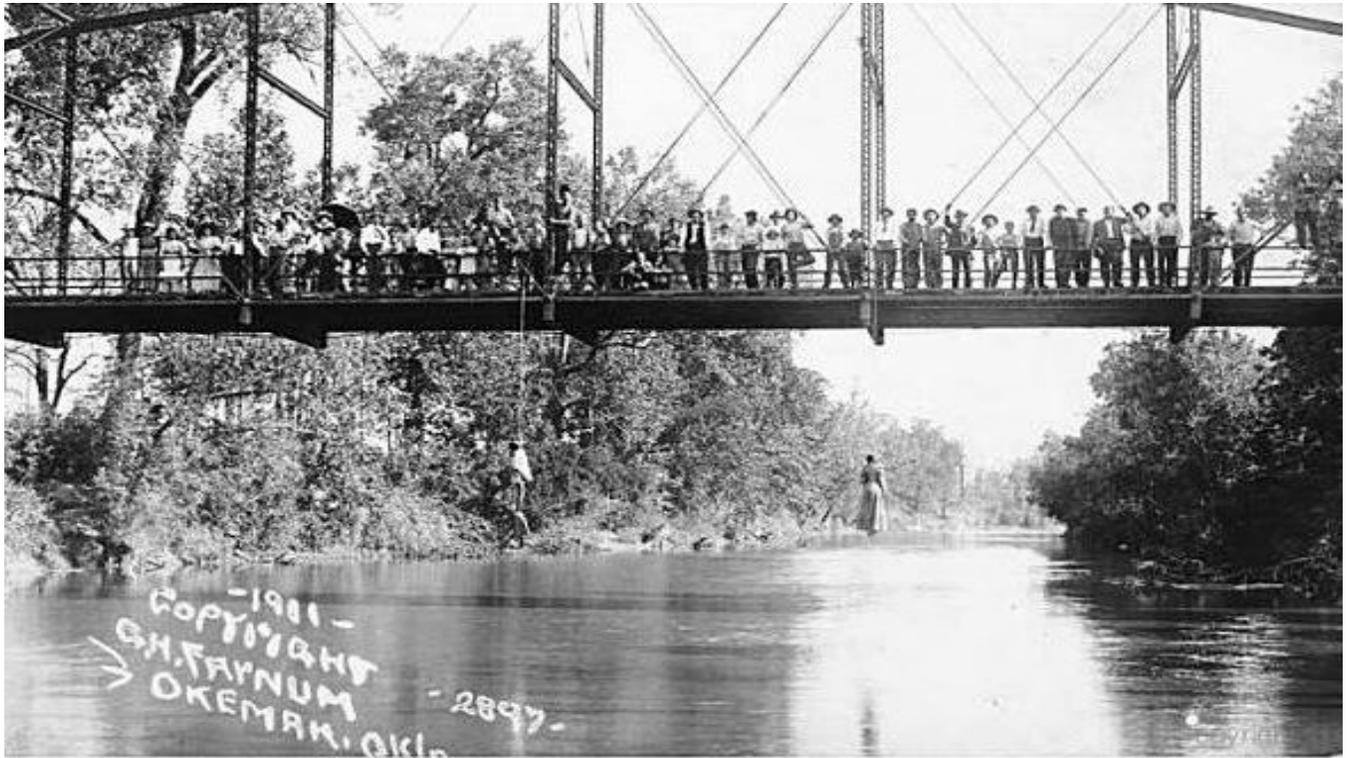
The first documented lynching in Oklahoma occurred in 1885. Over the next 15 years, more than 60 people were lynched, most of whom were white. As Oklahoma approached statehood in 1907, however, the demographics of lynching victims changed. From 1906 until the last lynching in 1936, there were 43 documented lynchings; 79% of those lynchings were of Black people.⁶⁰

Most of the alleged offenses for which Black people were lynched are unknown.⁶¹ However, stories from this era suggest that many Black people were lynched based on flimsy evidence and were especially targeted when the victim was white.⁶² White people used lynchings to control communities and signal that Black people were not welcome. Despite Black newspapers presenting Oklahoma as an escape from oppression, lynchings after statehood demonstrated Oklahoma was not all that different from the Deep South when it came to white sentiment toward Black people.⁶³

Lynchings regularly terrorized entire communities, including Native American communities. In 1898, two Seminole men were lynched after being accused of murdering a white woman. Their lynchings became notorious in part because of the violence inflicted upon the community.⁶⁴ The members

of the white mob that formed did not know who committed the crime but were confident they could torture someone into a confession. Twenty-three Native American men—21 Seminole Indians and two Muscogee (Creek) Indians—were taken captive over the course of multiple days. One innocent man was repeatedly hanged until he lost consciousness and then beaten until he became conscious again. Another man was deprived of sleep, food, and water for days. After they were freed, many of the Native American men returned home to find their property burned. By the time the mob found the alleged guilty parties and burned them alive, the entire community had been terrorized.⁶⁵

The rise in lynchings of Black people in the 1900s was likely a tactic to discourage Black settlement in Oklahoma. In the early 1900s, few people owned the land they were farming.⁶⁶ Acquiring land was therefore a competitive endeavor. Meanwhile, Black newspapers were encouraging Black people from the Deep South to move to the state. White Oklahomans were worried an influx of Black settlement would impede their potential for prosperity.⁶⁷ Lynchings were one way to warn Black people about the possible consequences of challenging the status quo.



In 1911, Laura Nelson, her 12-year-old son, L.D., and her 2-year-old daughter were taken from a jail cell in Okfuskee County and brought to a bridge six miles away to the Black part of town. The mob hanged Mrs. Nelson and her son from a bridge frequented by Black people. Some reports say the daughter was left on the side of the road and later taken in by a Black family, and other more gruesome reports say she was found in the river, drowned.⁶⁸ The next morning, when the mutilated bodies were

discovered, white people gathered to take photos which were later turned into postcards and sold as novelty items.⁶⁹ Black people who saw these postcards of white people posing with dead Black bodies were meant to think twice about moving to the area. Lynchings were not geographically isolated incidents. There has been at least one documented lynching in most of Oklahoma's counties.⁷⁰ The geography of lynchings suggests Black people had few options for escaping persecution in the state.

Lynchings and Executions: One and the Same



Executions and lynchings were both regular occurrences in Oklahoma though, and Black people were disproportionately at risk for both.

Across the country, conversations about death penalty abolition during the early 1900s centered around the fear that abolishing the death penalty would lead to more lynchings.⁷¹ Executions and lynchings were both regular occurrences in Oklahoma though, and Black people were disproportionately at risk for both. From 1900 to 1930, when most lynchings of Black people occurred in Oklahoma, officials carried out an estimated 34 executions. Fifty-nine percent of the people executed during this time were Black.⁷² Throughout this time period, an average of 7.5% of Oklahoma's population was Black.⁷³

Articles from Oklahoma in the early 1900s reveal a dissonance between the perceived immorality of lynchings and their effectiveness in enforcing social expectations for Black people. After the lynchings of Laura and L.D. Nelson, the *Okemah Ledger* wrote “while the general sentiment is adverse to the method, it is generally thought that the negroes got what would have been due to them.”⁷⁴ In 1910, a Black man named Thad Brown was lynched because he received a 99-year prison sentence. An article about his lynching reported, “it is said the negro would not have been molested if the death penalty had been imposed by the courts.”⁷⁵ These publications suggest that, even during the heyday of lynchings, white Oklahomans saw the death penalty as an alternative to lynchings. Even so, there were more lynchings than executions from 1900 to 1930, which may be explained by the number of lynching victims who were taken from police custody. Many Black people accused of crimes never even

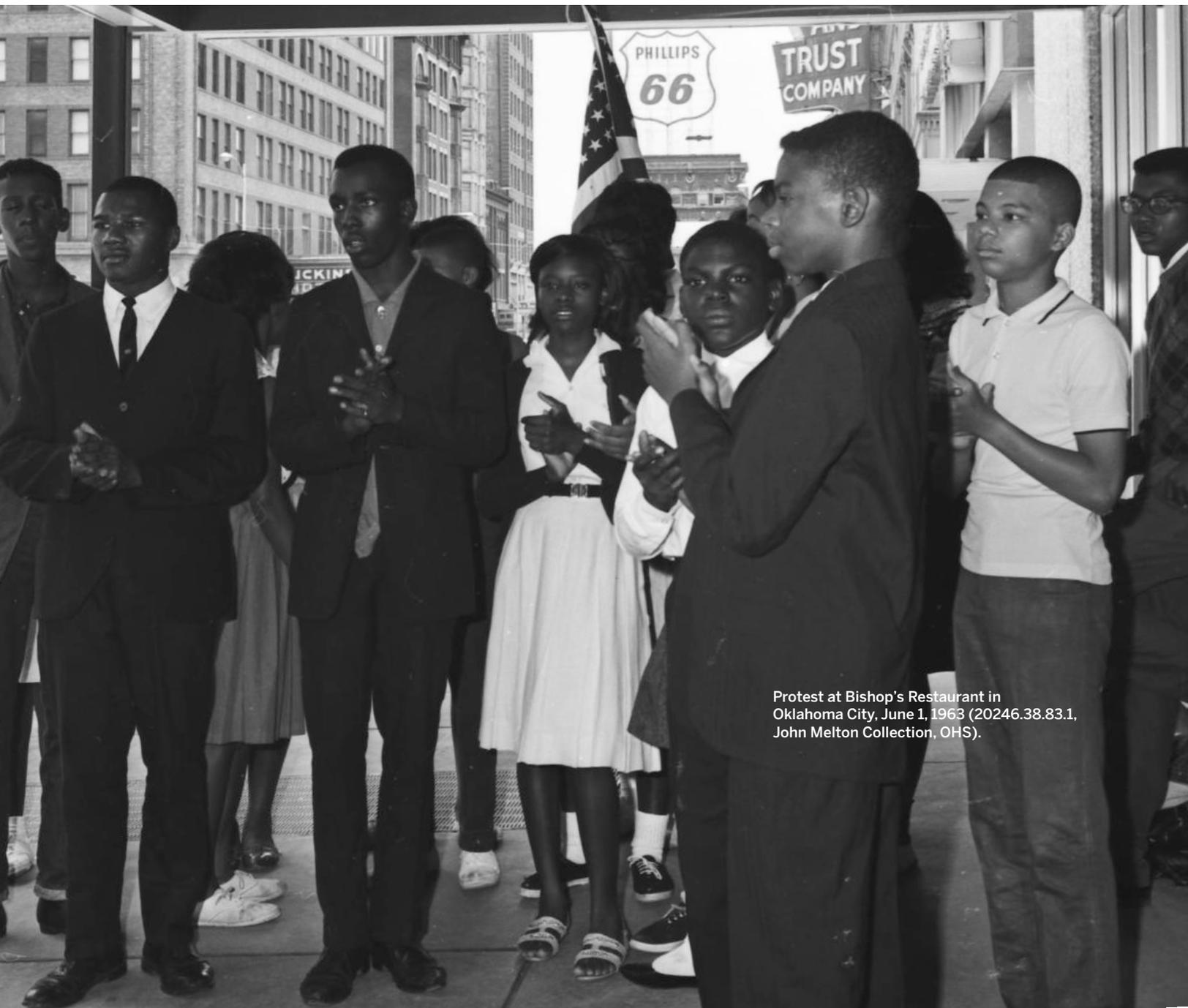
made it to court because mobs would often take them from their jail cells. Some police officers supported and helped coordinate the lynchings. In 1920, Claude Chandler, a Black man in Oklahoma City, and Roy Belton, a white man in Tulsa, were both lynched on the same weekend.⁷⁶ Chandler was taken from a jail cell after an Oklahoma City Sheriff and an Oklahoma City Jailer allegedly orchestrated his lynching and produced an elaborate story to hide their complicity. Governor James Robertson publicly expressed his belief that they were lying, as did the *Oklahoma Black Dispatch*, but the two were ultimately acquitted of all charges after 72 minutes of deliberation.⁷⁷ After Belton’s lynching, Tulsa County Sheriff James Woolley called the lynching “more beneficial than a death sentence pronounced by the courts.”⁷⁸ Tulsa Police Chief John Gustafson also admitted his men did not stop the lynching and said, “in my honest opinion the lynching of Belton will prove of real benefit to Tulsa and vicinity.”⁷⁹

Tulsa County Sheriff James Woolley called the lynching “more beneficial than a death sentence pronounced by the courts.”

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Civil Rights Challenges

After achieving statehood in 1907, Oklahoma began fully embracing Jim Crow laws. The first law passed in the state segregated train cars. Oklahoma did not repeal its public transportation segregation statutes until 1965.⁸⁰ Like segregation on train cars, it took decades for civil rights activists to dismantle Jim Crow in the state.



Protest at Bishop's Restaurant in Oklahoma City, June 1, 1963 (20246.38.83.1, John Melton Collection, OHS).

Voting Rights

The state's first voting law in 1907 instituted a literacy test that required voters to receive a passing score on oftentimes confusing and complex exams.⁸¹ In August 1910, Oklahoma voters approved a constitutional amendment implementing a grandfather clause that exempted white people from having to take the literacy test since their grandfathers were able to vote before 1866.⁸² After election officials denied literate Black people the ability to take the literacy test, the United States Supreme Court deemed the grandfather clause unconstitutional in *Guinn v. United States* in 1915.⁸³

Oklahoma instituted a new version of the grandfather clause the following year. The new law allowed people to vote if they were registered to vote before *Guinn* was decided. Anyone who could not or did

not vote in the 1914 election had 12 days to register before they were permanently barred from voting.⁸⁴ This law automatically extended voting rights to white people, without extending the same privileges to Black Oklahomans. The Supreme Court deemed the new grandfather clause unconstitutional in 1939.⁸⁵

Though the grandfather clause is a relic of the past, research suggests legal voting rights expansions are not enough to change the culture around voting for Black communities, particularly in the South.⁸⁶ Oklahoma's voting patterns indicate that decades of voter suppression in the early 1900s may have had long lasting effects that persist today: compared to other states, voting rates and voter registration rates among Black Oklahomans are still low.⁸⁷



DEFYING GUINN V. UNITED STATES

A new law automatically extended voting rights to white people, without extending the same privileges to Black Oklahomans. The Supreme Court deemed the new grandfather clause unconstitutional in 1939.

Legal Challenges to Segregation

Many of Oklahoma's civil rights challenges centered on segregation in higher education. In 1946, Ada Lois Sipuel Fisher, a Black woman from Grady County, applied to the University of Oklahoma College of Law because there were no Black law schools in the state. The National Association for the Advancement of Colored People (NAACP) and Roscoe Dunjee, editor of Oklahoma City's only Black newspaper and fervent civil rights leader, used her subsequent rejection to challenge segregation in higher education.⁸⁸ In 1948, the U.S. Supreme Court ordered Oklahoma to provide Sipuel Fisher access to law school.⁸⁹ Instead of admitting her to the University of Oklahoma College of Law, the state legislature set up a "law school" exclusively for Sipuel Fisher in a State Capitol Senate room. The school had three instructors and no plan of study. After further legal challenges, Oklahoma reluctantly agreed to allow Black people to be admitted to the College of Law and Sipuel Fisher began studying in 1949.⁹⁰

Shortly before Sipuel Fisher's admittance to the law school, George McLaurin became the first Black student at the University of Oklahoma after

similarly challenging segregation in higher education. A decision from the U.S. District Court for the Western District of Oklahoma allowed McLaurin to enroll, but he was often kept out of white students' sight: he had separate tables around campus and would sit at a desk just outside of his



Ada Sipuel Fisher signing the register of attorneys, 1952 (21412.M657.12, Z. P. Meyers/Barney Hillerman Photographic Collection, OHS).

classrooms.⁹¹ McLaurin continued to challenge the "separate but equal" doctrine, but the district court rejected McLaurin's claims of inequality, finding that racial segregation was a "deeply rooted social policy of the State of Oklahoma."⁹² The Supreme Court later ruled that the restrictions imposed on McLaurin inhibited his ability to study equally.⁹³



Clara Luper
2012.201.B0366B.0551 Oklahoma
Publishing Co. Collection, Oklahoma
Historical Society. June 22, 1963.

Protesting Discrimination

Throughout the civil rights era, Black Oklahomans continued to fight for equal opportunities. One of the first sit-ins of the Civil Rights Movement happened in Oklahoma City at Katz Drug Store. In 1958, Clara Luper, a Black teacher and civil rights leader, and students with the NAACP Youth Council held peaceful sit-ins to protest segregation at the lunch counter. They continued these sit-ins at other establishments in Downtown Oklahoma City.⁹⁴ In 1969, more than 200 Black sanitation workers in Oklahoma City went on strike to protest their pay, working conditions, and the lack of advancement opportunities, all of which were

reserved for white people.⁹⁵ They protested, along with Clara Luper, for months until the city agreed to modest wage increases. At least 37 people had been arrested by the end of the strike. Oklahoma City officials could have avoided the strike altogether by increasing residents' monthly garbage bills by \$0.25 (\$1.99 in today's dollars) to meet the sanitation workers' demands.⁹⁶

While much has changed in the decades since the Civil Rights Movement, the legacies of lynchings, mass racial violence, and Jim Crow inform current racial disparities in Oklahoma, particularly in the legal system.

disproportionate use of
the death penalty is

death penalty

OK

Oklahoma has executed
117 people since 1990,
second only to Texas,
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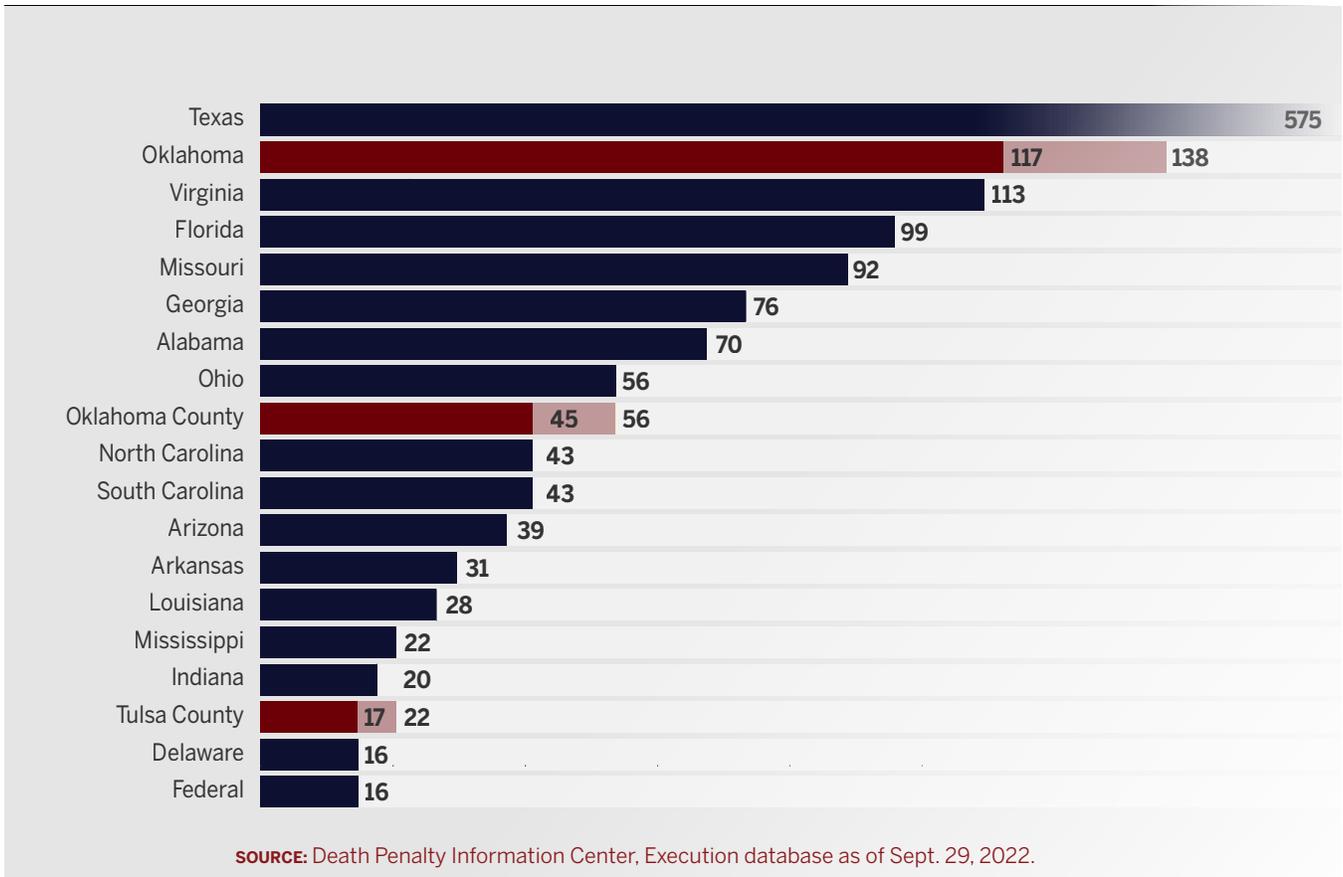
**Oklahoma has executed
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Oklahoma: A Modern Death Penalty Outlier

Death sentences and executions are in decline across the country.⁹⁷ Twenty-three states and the District of Columbia have abolished the death penalty, and three states have official gubernatorial moratoria on executions.⁹⁸ Nationally, eighteen people were sentenced to death and eleven people were executed in 2021. The eleven executions carried out in 2021 were the fewest since 1988.⁹⁹ In the face of this nationwide trend, Oklahoma scheduled 25 executions to take place between August 2022 and December 2024.¹⁰⁰

Oklahoma has executed 117 people since 1990, second only to Texas, which has a population seven times greater than Oklahoma.¹⁰¹ Per capita, Oklahoma has the highest execution rate in the nation.¹⁰² Oklahoma's disproportionate use of the death penalty is largely driven by two counties. Oklahoma County and Tulsa County rank fourth and fifth, respectively, for jurisdictions with the most executions in the country since 1972. No county outside of Texas is responsible for more executions.¹⁰³ While fewer and fewer U.S. counties are using the death penalty, Oklahoma County is one of only six counties in the country to have imposed an average of one death sentence per year since 2015.¹⁰⁴ Very few jurisdictions impose more than one death sentence per year. Oklahoma County, Oklahoma was one of two counties in the U.S. that sentenced multiple people to death in 2021.¹⁰⁵ The other, Los Angeles County, California, has a population more than 12 times that of Oklahoma County.¹⁰⁶ Oklahoma County also uses the death penalty disproportionately compared to the rest of the state,

OKLAHOMA COUNTY and Tulsa County execute more people than most U.S. states. The scheduled executions will widen the disparities.



LIGHT RED BARS represent the total number of executions attributable to each jurisdiction if all scheduled executions take place.

Oklahoma County is one of only six counties in the country to have imposed an average of one death sentence per year since 2015.

as it comprises 20% of the total state population but is responsible for 38% of all Oklahoma death sentences.¹⁰⁷

Oklahoma County is a clear outlier in its use of the death penalty. It has imposed the most death sentences and carried out more than 2.5 times the number of executions as any other county its size (population between 750,000–1,000,000) in the United States.¹⁰⁸ The 45 people the county had executed through October 1, 2022 dwarfed the 17 people executed by St. Louis County, Missouri, which ranks second.¹⁰⁹ Oklahoma County's per capita execution rate of 5.6 people per 100,000 population was more than triple (3.3 times larger) that of the second ranking county its size (again, St. Louis County, at 1.7 per 100,000 population).¹¹⁰ Tulsa is also a national outlier. It is tied with Montgomery County, Texas as the most prolific executioner of any county between 500,000–750,000 in

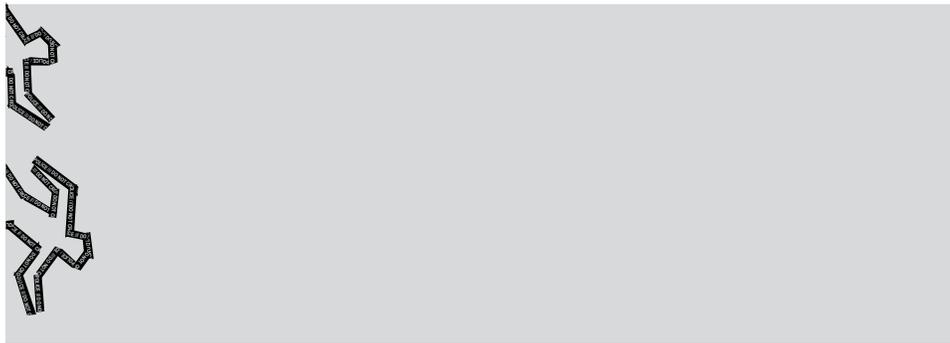
size, and has the second largest per capita execution rate at 2.6 per 100,000 population.¹¹¹ As of DPIC's January 1, 2021 census of U.S. death sentences, it had imposed more death sentences than any other county its size that required unanimous jury votes for death and prohibited judicial overrides of life recommendations, trailing only Jefferson County (Birmingham), Alabama and Polk County (Lakeland), Florida.¹¹²

The prolific use of the death penalty in Oklahoma's outlier counties has also led to a high reversal rate. A review of death sentences imposed in Oklahoma and Tulsa counties between 1972 and January 1, 2021, demonstrates that half of all death sentences imposed in these counties have been reversed or have resulted in a commutation or exoneration, making a death sentence no more statistically reliable than a coin toss.¹¹³

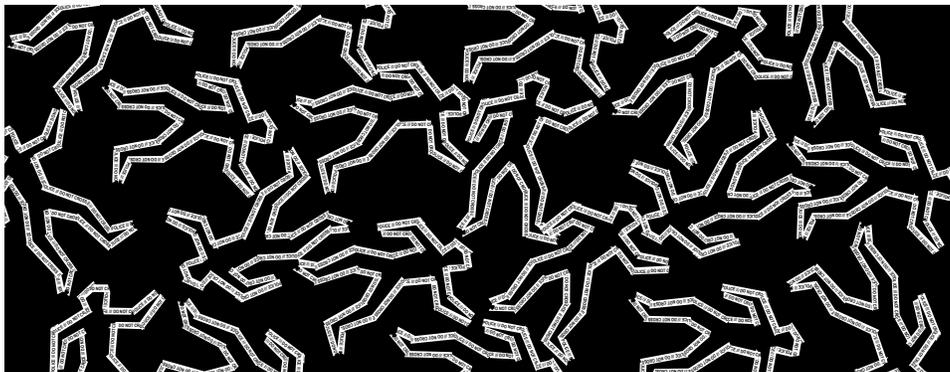
Persons Executed for
White-Black Interracial
Murders in Oklahoma
since 1976

This chart does not include executions for offenses involving victims of multiple races.

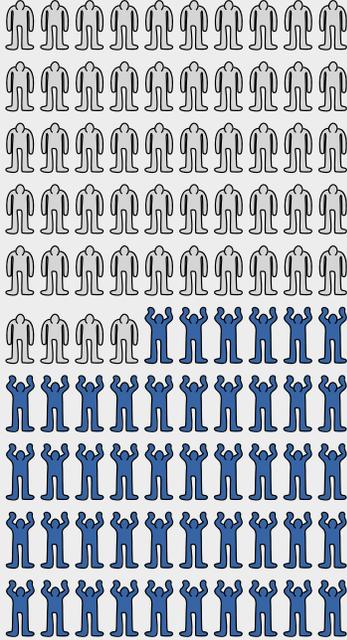
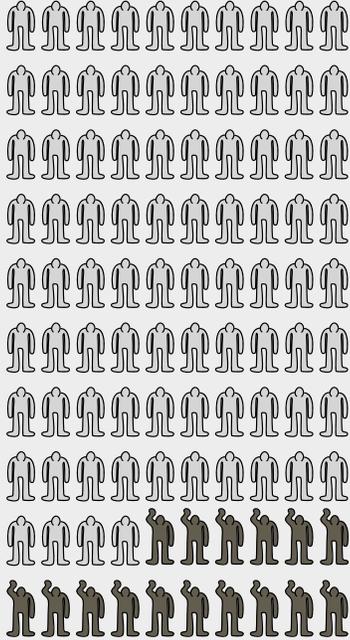
White Defendant/Black Victim (2)



Black Defendant/White Victim (19)

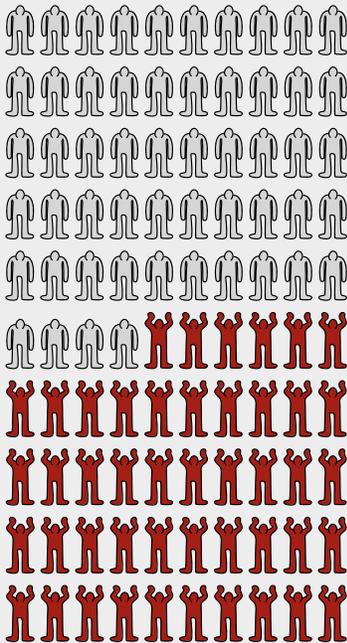
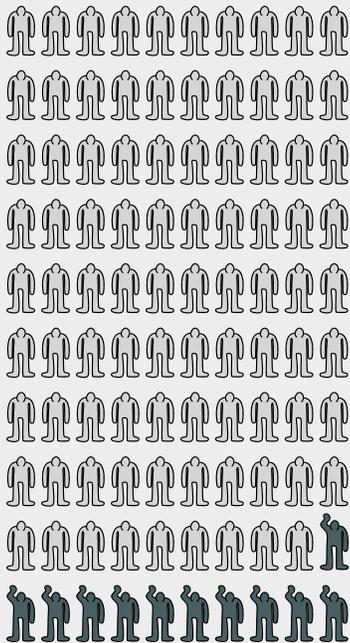


Source: Death Penalty Information Center, Execution Database (last visited Sept.29, 2022).



Black people comprise **16% of Oklahoma County's** total population...

But **Black people** have received **46% of death sentences** imposed in **Oklahoma County.**



Black people comprise **11% of Tulsa County's** total population...

But **Black people** have received **46% of death sentences** imposed in **Tulsa County.**

Racial Discrimination Infects All Aspects of the Death Penalty in Oklahoma

Race remains an important factor in Oklahoma death sentencing. A study of all homicides in Oklahoma from 1990 to 2012 found that just 3% of homicides with known suspects resulted in a death sentence. The authors determined that, regardless of the race of the defendant, the race of the victim was statistically significant in predicting whether a murder defendant was sentenced to death.¹¹⁴ The odds of a defendant receiving a death sentence in cases with a white female victim were 10 times higher than if the victim was a minority male.¹¹⁵ In general, homicides involving minority male victims were the least likely to result in a death sentence.¹¹⁶

On average, 56% of murder victims in Oklahoma are white.¹¹⁷ By contrast, 74% of death sentences imposed for homicides from 1990-2012 involved white victims.¹¹⁸ This pattern holds true in cases resulting in executions. Of Oklahoma's 117 post-1972 executions, only nineteen involved the murders of Black victims.¹¹⁹ Of the 25 executions scheduled over the next two years, 68% involve white victims.¹²⁰ Though most murders are intraracial, there are stark disparities in executions for interracial murders.

In cases with victims of a single race, nineteen Black defendants have been executed for the murder of white victims, while only two white defendants have been executed for the murder of Black victims.¹²¹ These numbers suggest that valuing white victims more than others has resulted in disproportionate punishment for defendants whose cases involve white victims, particularly in interracial murders.

Racial Disparities in Death Sentencing in Oklahoma County and Tulsa County

A disproportionate number of death sentences in Oklahoma County have been imposed on Black defendants. Roughly 16% of Oklahoma County's population is Black.¹²² Comparatively, 46% of death sentences from Oklahoma County between 1972 and January 1, 2021, were imposed on Black people.¹²³ Execution data reveal similar trends: 40% of people executed since 1972 who were prosecuted in Oklahoma County were Black.¹²⁴ Nine Black people prosecuted in Oklahoma County have been executed for the murders of white victims in cases with victims of a single race. In contrast, no white person sentenced from Oklahoma County has been executed for the murder of a Black victim.¹²⁵ Twelve of the people currently scheduled for execution were prosecuted in Oklahoma County and half of them are Black.¹²⁶ Eight of the cases involve white victims.¹²⁷

Tulsa County's death sentences are also racially disproportionate. Black people make up 11% of the population in Tulsa County, but account for 46% of death sentences imposed between 1972 and January 1, 2021.¹²⁸ Additionally, 41% of people executed who were prosecuted in Tulsa County were Black. More than half of the executions of Black defendants from

Tulsa County involved cases with white victims, but only one white person was executed for the murder of a Black person.¹²⁹ Four of the five people set to be executed from Tulsa are Black; all but one of the cases involved a white victim.¹³⁰

In 2017, the Oklahoma Death Penalty Review Commission found unacceptable risks of discrimination in Oklahoma's death penalty administration, such as the disparities in the race of victims discussed above.¹³¹ The "inconsistent, discriminatory, and inhumane application of the death penalty"¹³² in Oklahoma has been public information for years but little has changed.¹³³ The intersection of race and systemic flaws in Oklahoma's death penalty system is evident when reviewing the cases of people sentenced to death in the state, including the people currently set for execution.



Black death-row exonerees are 2.7 times more likely to have been wrongfully convicted because of official misconduct.

Official Misconduct

Police, prosecutors, and judges wield significant power in death penalty cases. National data on exonerations reveal nearly 80% of wrongful capital convictions of Black people involve official misconduct by police, prosecutors, or other government officials. Relatedly, Black death-row exonerees are 2.7 times more likely to have been wrongfully convicted because of official misconduct.¹³⁴ Official misconduct has been identified in several Oklahoma death penalty cases, and Black defendants have often been at the receiving end. For example, Black defendants, most of whom were prosecuted in Oklahoma County, account for more than one-third of death penalty reversals and exonerations attributable to prosecutorial misconduct.¹³⁵

Officials involved in several of the cases set for execution have committed serious misconduct. Detective Jeff Henderson, a corrupt police officer who was accused of planting evidence, testified against

Clarence Goode, a Black and Muscogee man set to be executed on August 8, 2024.¹³⁶ A federal court later found Henderson guilty of crimes related to misconduct in other cases, including six counts of perjury and two civil rights violations.¹³⁷ Judge Susan Caswell, a former Oklahoma County prosecutor, was involved in the cases of two individuals set for execution. By the time Judge Caswell presided over Phillip Hancock's 2004 trial and Alfred Mitchell's 2002 resentencing,¹³⁸ she had been disqualified from multiple criminal cases for being biased in favor of prosecutors.¹³⁹ Additionally, Oklahoma's Judicial Ethics Advisory Panel found that advertisements during her election campaign violated the Code of Judicial Conduct by "committing the judicial candidate, if elected, to favor certain parties in litigation."¹⁴⁰ Judge Caswell was assigned to Mitchell's resentencing after a federal appeals court overturned Mitchell's first death sentence

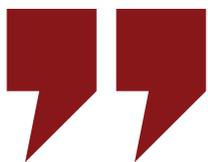
because the prosecution relied upon fabricated evidence, withheld favorable evidence, and engaged in improper argument.¹⁴¹ At resentencing, Judge Caswell personally attempted to rehabilitate potential jurors who would not consider life sentences while refusing to allow the defense to question jurors who had reservations about the death penalty. She allowed the prosecution to make inflammatory arguments, to present prejudicial photos and video to the jury, and to present testimony that went beyond the bounds of permissible victim impact evidence.

In 2006, the Oklahoma Court of Criminal Appeals overturned Mitchell's second death sentence because of prosecutorial misconduct and "significant and disturbing evidence of bias."¹⁴² The court recounted several instances of judicial favoritism and found that "the trial court's repeated refusal to condemn or ameliorate [the prosecutor's] misconduct suggests a disturbing lack of even-handedness."¹⁴³ The case was reassigned to a different judge, and Mitchell was sentenced to death again in 2008.¹⁴⁴



Innocent African Americans who are convicted of murder are at a disadvantage not only because their convictions were more likely to have been influenced by official misconduct, but also simply because of their race.

— Samuel Gross et al. *Race and Wrongful Convictions in the United States*, National Registry of Exonerations 7 (2017)





The Tulsa Police Department has the second deadliest police force among the 100 largest city police departments in the U.S.

Police

Racial disparities in death sentencing reflect which homicides receive police attention. In 2020, murder cases involving white victims were 50% more likely to be solved than cases with Black victims.¹⁴⁵

Police behavior also contributes to racial disparities in wrongful convictions. Researchers at the National Registry of Exonerations have found that racial differences in murder exonerations are largely attributable to police misconduct.¹⁴⁶

Police coercion contributed to the wrongful convictions of three Black death-row exonerees in Oklahoma. Police led Robert Miller Jr. to an admission of guilt over the course of a 12-hour interview even though his description of the crime was inconsistent with the facts.¹⁴⁷ Derrick Smith, the key witness in Paris Powell's and Yancy Douglas' capital trials, recanted his testimony years after the pair were sentenced to death. Police coerced Smith into implicating Powell and Douglas and offered him a

reduced sentence in exchange for his testimony.¹⁴⁸

Nationally, jurisdictions that are death penalty outliers are often outliers in the deadly use of police force against civilians.¹⁴⁹ This pattern holds true in Oklahoma. The Tulsa Police Department has the second deadliest police force among the 100 largest city police departments in the U.S., and the Oklahoma City Police Department ranks seventh for the same metric. The average rates of killings by the Tulsa and Oklahoma City police departments were 9.5 and 8.9 per 1,000,000 residents, respectively, while the average among the 100 largest city police departments was 4.4.¹⁵⁰ Data from 2013–2021 show that Black people are overrepresented in fatal police encounters with these police departments: 47% of people killed by the Oklahoma City Police Department were Black, as were 24% of the people killed by the Tulsa Police Department.¹⁵¹

Prosecutors

Prosecutorial misconduct is often involved in death penalty reversals and exonerations, and the Death Penalty Information Center has identified at least 30 such instances in Oklahoma. Eleven of those cases were prosecuted in Oklahoma County, and four were prosecuted in Tulsa County.¹⁵² Oklahoma County in particular has a troubled history with prosecutorial misconduct at the hands of former District Attorney Robert “Cowboy Bob” Macy and police chemist Joyce Gilchrist.

Macy served as the District Attorney for Oklahoma County from 1980 to 2001.¹⁵³ He is notorious for his overzealous pursuit of the death penalty. During Macy’s tenure as District Attorney, his office secured 89 death sentences. Thirty-seven of these death sentences (41.6%) were imposed on Black defendants.¹⁵⁴ During this time, the Black population of Oklahoma County was between 12.7% and 15.2%.¹⁵⁵

Macy was featured as one of the Fair Punishment Project’s (FPP) Top 5 Deadliest Prosecutors.¹⁵⁶ According to FPP, Macy personally secured 54 death sentences during his tenure, and a court found misconduct occurred in 33% of those cases even if the court classified the misconduct as “harmless.”¹⁵⁷ The Death Penalty Information Center’s study of prosecutorial misconduct found ten Oklahoma County

misconduct reversals or exonerations in cases prosecuted during Macy’s tenure that resulted in death sentences. In six of these ten cases, the defendants were Black men.¹⁵⁸

Gilchrist was a forensic chemist with the Oklahoma City Police Department crime laboratory from 1980–2001. Macy heavily relied on Gilchrist’s ability “to do things with evidence that nobody else was able to do.”¹⁵⁹ Gilchrist was referred to as the “darling of Macy’s lethal forensics squad.”¹⁶⁰ Macy used Gilchrist’s testimony in at least 24 death penalty prosecutions,¹⁶¹ and, in many cases, Gilchrist misidentified evidence, withheld evidence, and provided misleading or false testimony. In 2001, Gilchrist was fired, and Macy unexpectedly resigned shortly after Gilchrist’s misconduct and Macy’s use of fabricated evidence was uncovered. Eleven of the people whom Gilchrist and Macy sent to death row were executed before Gilchrist’s systemic misconduct came to light.¹⁶² Three people whose death sentences relied partially on Gilchrist’s testimony were later exonerated.¹⁶³

Gilchrist Defendants Who Were on Death Row When Gilchrist's Misconduct Was Revealed

NAME	CURRENT CASE STATUS
Randall E. Cannon	Executed
Curtis E. McCarty	Exonerated
Cyril Ellis	Died on death row
John M. Hooker	Executed
Victor W. Hooks	Resentenced to life or less
Ernest M. Carter, Jr.	Executed
Alfred B. Mitchell	Active death sentence
Michael Hooper	Executed
Yancy Douglas	Exonerated
George Ochoa	Executed
Oswaldo Torres	Sentence Commuted
Steven L. Abshier	Died on death row
Robert L. Miller, Jr.	Exonerated

Gilchrist Defendants Who Were Executed Before Gilchrist's Misconduct Was Revealed

NAME	EXECUTION DATE
Malcolm R. Johnson	January 6, 2000
Michael Roberts	February 10, 2000
James Robedeaux	June 1, 2000
Roger Berget	June 8, 2000
William Bryson, Jr.	June 15, 2000
Eddie Trice	January 9, 2001
Dion Smallwood	January 18, 2001
Mark Fowler	January 23, 2001
Billy Fox	January 25, 2001
Loyd LaFevers	January 30, 2001
Marilyn Plantz	May 1, 2001

The effects of prosecutorial misconduct are long lasting, and there are few avenues for remedies. In total, six people remain on death row who were prosecuted during Macy's tenure.¹⁶⁴ Among them are two men scheduled for execution, Richard Glossip and Alfred Mitchell. Newly discovered evidence suggests Glossip's retrial may have been tainted by prosecutorial misconduct. An independent investigation found documentation from the prosecutor in Glossip's second trial, former Assistant District Attorney Connie Smothermon, indicating she withheld favorable evidence from the defense and

violated the Court's Rule of Sequestration by providing the key witness in Glossip's trial information about the testimony of other witnesses, purportedly "so he could conform his testimony to match the evidence," among other reasons.¹⁶⁵ Mitchell's death sentence was reversed twice because of prosecutorial misconduct that included withholding favorable evidence and improper argument.¹⁶⁶ Gilchrist testified against Mitchell at his first trial, falsely claiming his DNA was at the crime scene when there was no DNA recovered.¹⁶⁷

Malcolm Rent Johnson

Malcolm Rent Johnson, a Black man, was tried, convicted, and sentenced to death by an all-white jury for the rape and murder of an elderly white woman in Oklahoma City in 1982.¹⁶⁸ Johnson was tried by Bob Macy, and his conviction was based in part on testimony from Joyce Gilchrist. Johnson was executed in January 2000, only a year before Gilchrist's widespread misconduct came to light.¹⁶⁹

Doubts about Johnson's guilt still linger today.

At trial, Gilchrist testified that semen found at the victim's apartment was consistent with Johnson's blood type and that strands of hair found at the crime scene were "consistent microscopically" with Johnson's.¹⁷⁰ Johnson requested funds to hire his own forensic expert to review the evidence but was denied.¹⁷¹ During federal habeas proceedings, Johnson was able to secure affidavits from two forensic experts that undermined Gilchrist's findings, but the court ruled that this evidence was not enough to change the outcome of the trial.¹⁷²

Johnson was executed without further scrutiny of his claim.

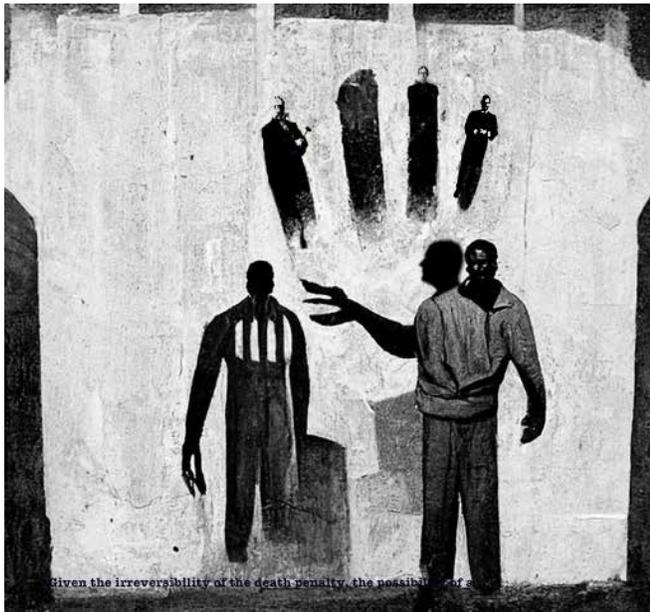
When Gilchrist's misconduct came to light, the Oklahoma City Police Department reviewed the evidence used in Johnson's case. In a July 2001 internal memorandum, forensic chemist Laura Schile wrote that a review of the semen evidence showed that sperm was not present in the samples. Schile's findings were corroborated by three other scientists at the forensics lab.¹⁷³ At the time, former Oklahoma County Chief Public Defender Robert Ravitz said that the review "really calls into question whether the state of Oklahoma executed an innocent person."¹⁷⁴

While all this information does not necessarily exonerate Johnson, it seriously calls into question the integrity of his conviction and death sentence. Without Gilchrist's fabricated evidence, the jury may have had lingering doubts—the most persuasive type of mitigating evidence¹⁷⁵—which could have led it to recommend a lighter sentence to Johnson.

70
75
72
69
68



Race and Wrongful Convictions



People of color—especially Black people—are overrepresented among death-row exonerees nationally.¹⁷⁶ They also spend on average four years longer on death row before their exonerations than white exonerees.¹⁷⁷ The same trends exist in Oklahoma where ten people have been exonerated. Half of Oklahoma’s exonerees are Black. The median number of years spent on death row before exoneration was ten years for Black defendants, compared to six years for white defendants.¹⁷⁸

Perjury or false accusation is one of the most common reasons death-row exonerees were sentenced to death, second only to official misconduct. Perjury or false accusation was a reason for exoneration in 67% of death-row innocence cases. Seventy-one percent of Black exonerees’ cases involved this issue. In Oklahoma, six of the ten innocent people released from Oklahoma’s death row—and four of the five Black exonerees—were affected by perjury or false accusation.¹⁷⁹

Jurisdictions that pursue the death penalty more often are at greater risk for wrongful convictions. Oklahoma County is responsible for half of all death penalty exonerations in the state, and responsible for wrongfully convicting three of the five Black death penalty exonerees.¹⁸⁰ With five death penalty exonerations, Oklahoma County has produced more capital exonerations than all but four other counties in the U.S.¹⁸¹ Sixty-two years have been lost in prison to wrongful capital convictions in Oklahoma County alone.¹⁸²

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Robert Lee Miller, Jr.

Robert Lee Miller, Jr. was wrongfully convicted and held on death row for three years after DNA evidence proved he was innocent. Bob Macy and Joyce Gilchrist both played a role in his wrongful capital conviction.¹⁸³ Miller was convicted and sentenced to death in 1998 for the murders and rapes of two elderly women.¹⁸⁴ Gilchrist reported that semen collected from the scene pointed to someone with type-A blood, and hairs found at the scene were said to have “negroid characteristics.”¹⁸⁵ Miller was one of 173 Black men interrogated about the case and one of 23 to give a blood sample. Miller’s blood was type-A.¹⁸⁶

During his interrogation, Miller said he was hallucinating and was troubled by spirits and demons. The officers interrogated Miller for twelve hours, feeding him information about the crime. Miller eventually “confessed” to the murders, though his description of events was inconsistent with the actual facts of the case. At trial, Macy used this false confession, arguing to the jury: “He knew detail after detail. Details only the killer would know.” Macy also relied heavily on Gilchrist’s forensic testimony about blood types and “negroid” hairs. However, Gilchrist tested other blood samples and saliva samples from the crime scene and found

different blood markers that were inconsistent with Miller’s sample. Gilchrist said these inconsistencies may have occurred because the sample from the crime scene could have been mixed with the victim’s blood.¹⁸⁷

A secondary review of the hairs prompted other forensic scientists to describe Gilchrist’s testimony as “essentially meaningless” and “completely unjustified.”¹⁸⁸ Gilchrist’s forensic examination also eliminated a man named Ronald Lott as a potential suspect at the time. However, DNA testing conducted in 1995 conclusively showed that the semen at the crime scene belonged to Lott and not Miller.¹⁸⁹

Despite the DNA evidence proving that Miller was not the murderer, Macy fought to keep Miller on death row for another three years, baselessly claiming he was an accomplice to the murder.¹⁹⁰ This is part of a larger issue with race and the capital punishment system – Black death-row exonerees spend on average over four years longer waiting to be exonerated than white exonerees, in part due to higher rates of official misconduct and perjured testimony in cases involving Black exonerees.¹⁹¹ Miller was finally released and exonerated in 1998 after ten years of wrongful incarceration.¹⁹²

Ineffective Defense Counsel

Skilled defense counsel can make the difference between life and death in capital trials. While many capital defendants are Black, most capital attorneys are white. These disparities can affect the quality of representation if white attorneys are not aware of implicit biases they may have or are otherwise incapable of empathizing with clients who may have vastly different life experiences than them.¹⁹³ Meaningful attorney-client relationships are crucial in death penalty cases. The case of Marlon Harmon, a Black man set to be executed on December 5, 2024, demonstrates this well: according to his current counsel, he rejected the prosecution's initial offer of a life sentence because he did not trust his trial attorneys.¹⁹⁴

The Oklahoma Death Penalty Review Commission reported that "state and federal courts in Oklahoma have often found the representation of counsel in capital cases to be 'ineffective.'"¹⁹⁵ Procedural bars in Oklahoma can make it difficult for people sentenced to death to receive relief even when they present potentially meritorious ineffective assistance of counsel claims.¹⁹⁶ Richard Fairchild's trial attorney did not investigate or present evidence of the traumatic brain damage to his frontal lobe he received as a result of his amateur teenage

boxing career. Frontal lobe brain damage has been connected to chronic impulse control problems that may have helped explain Fairchild's crime. Instead, his attorney attributed Fairchild's actions to him being a "mean drunk."¹⁹⁷ To make matters worse, Fairchild's appellate attorney did not have the time nor resources to review the trial attorney's performance. The appellate attorney's failure to challenge trial counsel's performance has prevented subsequent courts from granting Fairchild relief.¹⁹⁸

At least three of the Black men scheduled for execution had attorneys who failed to present crucial evidence that could have saved their lives. John Hanson's trial and appellate attorneys did not investigate or present evidence of his major mental illnesses and brain damage to the jury or on appeal, even though these conditions were directly related to the crime for which he is incarcerated.¹⁹⁹ He is set to be executed on December 15, 2022. Emmanuel Littlejohn, scheduled to be executed on November 2, 2023, has had brain damage his entire life because of his mother's drug and alcohol abuse while she was pregnant.²⁰⁰ This information was never presented to the jury.²⁰¹ As a result, a federal appeals court reversed and remanded Littlejohn's case, indicating trial counsel may have been ineffective.²⁰²

The lower court, however, allowed his death sentence to stand.²⁰³ Tremane Wood is scheduled to be executed on February 8, 2024. He has challenged his death sentence because his overworked trial counsel who was actively battling addiction failed to investigate and present substantial mitigating evidence.²⁰⁴



Procedural bars in Oklahoma can make it difficult for people sentenced to death to receive relief even when they present potentially meritorious ineffective assistance of counsel claims.

Tremane Wood

Tremane Wood was convicted and sentenced to death in Oklahoma County in 2004.²⁰⁵ He was sentenced to death for the murder of Ronnie Wipf during the commission of a robbery, a murder that his brother, Zjaiton “Jake” Wood, admitted committing.²⁰⁶ However, Jake was represented by a litigation team that worked diligently to secure a life sentence.²⁰⁷ Meanwhile, Tremane was appointed John Albert, an overworked attorney who was struggling with alcohol and substance use disorders while handling approximately 100 cases.²⁰⁸ Albert represented two other capital defendants at the same time he represented Wood, and both have been granted relief because Albert’s substance use impaired his ability to effectively advocate for them.²⁰⁹

Had Albert investigated and prepared mitigation evidence, he could have presented a detailed history of trauma and abuse that plagued Wood’s childhood, including the harmful effects of growing up bi-racial in a rural, predominantly white community.²¹⁰ Furthermore, he could have shown the jury that Wood’s lack of a strong parental figure led him

to idolize his older brother Jake.²¹¹ Without a strong advocate, Wood was unequipped to effectively challenge some of the ways that race played a role in his case.

The victim in this case was a white man from Montana, while Wood is bi-racial (white and Black).²¹² Judge Ray Elliott, the judge who presided over Wood’s trial and his appeal regarding the ineffective assistance of counsel claim, has made troubling remarks about people of color.²¹³ Judge Elliott was overheard referring to Mexicans as “nothing but filthy animals” who “deserve to all be taken south of the border with a shotgun to their heads” and “if they needed volunteers [to do so] that he would be the first in line.”²¹⁴

Moreover, only one Black person served on Wood’s jury, and she has since said that she felt pressured and bullied into returning a death sentence. At trial, when asked by the judge about the death verdict, the juror, who was the foreperson, said “I signed the one for death because everybody was waiting on me. I didn’t want everyone to be here.”²¹⁵

Confluence of Age and Race

In 2005, the U.S. Supreme Court concluded that execution of juveniles is unconstitutional, relying in part on scientific evidence of juveniles' incomplete brain development.²¹⁶ The brain is not fully formed at 18 but instead continues developing until around age 25, and for men brain maturation can take an additional two years.²¹⁷ Because of this brain development timeline, the American Psychological Association's Council of Representatives overwhelmingly voted in favor of a resolution opposing the death penalty for adolescents aged 18-20 in August 2022.²¹⁸ Traumatic environments can hamper brain maturity, which is particularly relevant since all the men Oklahoma plans to execute have experienced physical and emotional abuse.²¹⁹ Racial stereotypes can affect juries' consideration of youth in capital cases. Black youth are perceived as older and less innocent than white youth. These biases hold Black children to different standards than their white peers as it concerns guilt and punishment.²²⁰ Seven of the 10 Black men set for execution were 25 years old or younger at the time of the crimes that sent them to death row. Three of the Black men were 20 or younger; one of them, Alfred Mitchell, was only two weeks past his 18th birthday.²²¹ Had the crime occurred two weeks earlier, he would not have been eligible to receive the death penalty.

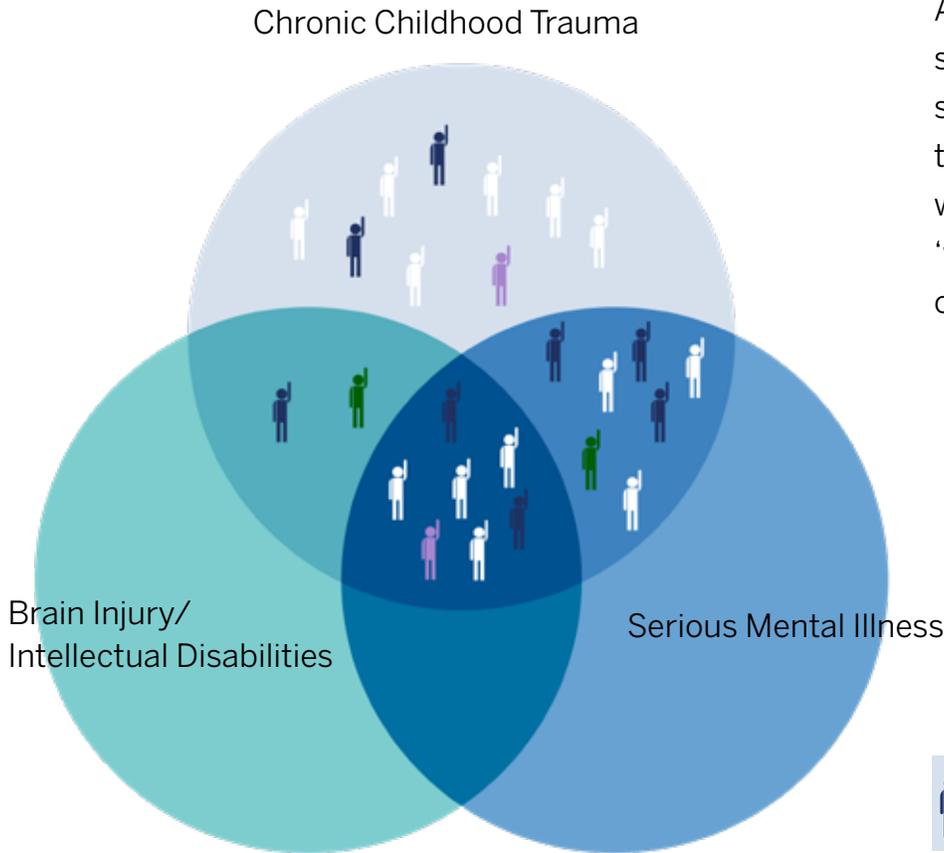
Intellectual Disability, Brain Damage, and Serious Mental Illness

The U.S. Supreme Court declared that executing individuals with intellectual disability is unconstitutional in *Atkins v. Virginia*.²²² Of the 142 people in the U.S. who have been removed from death row because of an intellectual disability, the vast majority (83%) have been people of color, and more than two-thirds have been Black (68%). This suggests that people of color, especially Black people, with intellectual disabilities are at greater risk of being subjected to the death penalty. There have been five *Atkins* reversals in Oklahoma, and four of the defendants were people of color.²²³

Oklahoma has limited the ability of people on death row to seek relief based on intellectual disability.²²⁴ Michael Smith, a Black man set to be executed on July 6, 2023, has provided courts extensive documentation of a lifelong intellectual disability.²²⁵ Despite these findings, Oklahoma has denied Smith a hearing.²²⁶

Though brain damage and severe mental illness have not been recognized as constitutional exemptions from the death penalty, these conditions affect logical and moral reasoning and have been recognized as relevant considerations at sentencing.²²⁷ Racial disparities in treatment and diagnosis also mean

that the recognition of these conditions is less likely for defendants of color, particularly early on in cases with inadequate defense counsel.²²⁸ Even when these conditions have been recognized, courts have been reluctant to grant relief to affected defendants. At least eight of the people set for execution have documented evidence of brain damage and four of them are people of color. Carlos Cuesta-Rodriguez, scheduled to be executed on June 6, 2024, has brain damage from his traumatic childhood and a bus crash in which Cuesta-Rodriguez was thrown through the windshield and fractured his skull.²²⁹ In addition to severe and chronic schizophrenia with catatonia—a behavioral syndrome marked by an inability to move normally—Benjamin Cole’s mental faculties are worsened by brain damage, including a sizable lesion in his brain that continues to grow.²³⁰ Multiple neurologists have stated that Cole is unable to understand legal proceedings.²³¹ Cole is scheduled to be executed on October 20, 2022. The jury that sentenced Wendell Grissom to death never learned about his extensive brain damage due to oxygen deprivation at birth and multiple traumatic brain injuries he suffered as a child.²³² He is scheduled to be executed on January 11, 2024.”



All 25 people Oklahoma seeks to execute have significant vulnerabilities that bring into question whether they represent the 'worst of the worst' criminal offenders.

Although severe mental illness is a recognized mitigating factor, juries routinely sentence severely mentally ill defendants to death.²³³ The vast majority of those Oklahoma has scheduled for execution have been diagnosed with a mental illness, often untreated or undiagnosed until incarceration.²³⁴ Wade Lay, scheduled to be executed on August 3, 2023, suffers from schizophrenia and the crime he committed occurred as a direct result of his delusions.

Despite severe mental illness, he represented himself during the trial without standby counsel to help him.²³⁵ Because of his case, the Oklahoma Court of Criminal Appeals changed the rules for capital trials, requiring trial judges to appoint standby counsel for defendants representing themselves. The court decided not to retroactively apply this ruling to Lay.²³⁶

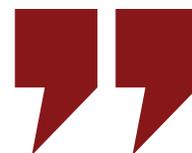
Discrimination in Jury Selection

Studies have shown that all-white juries are more likely to sentence Black defendants to death and less likely to consider all available evidence than racially diverse juries.²³⁷ Many Black people sentenced to death in Oklahoma were sentenced by all-white or nearly all-white juries. Julius Jones, who was recently granted clemency (but remains incarcerated for life without the possibility of parole), was convicted by a nearly all-white jury for the killing of a white man. Prosecutors struck every Black potential juror but one.²³⁸ Additionally, one of the white jurors described Jones using the n-word; more specifically, he said “they should just take the [racist remark] out and shoot him behind the jail,”²³⁹ which arguably called for Jones to be lynched. Tremane Wood’s case was infected by similar issues; the sole Black juror selected later said the other jurors, who were all white, pressured her to sentence him to death.²⁴⁰ Even when defendants successfully substantiate

their jury discrimination claims, courts have declined to grant relief. Malcolm Rent Johnson argued that the prosecution unconstitutionally struck all the Black potential jurors on the basis of race.²⁴¹ After an evidentiary hearing, the Oklahoma trial court found that while Johnson made a threshold showing of racial discrimination in jury selection, the prosecution offered sufficient race-neutral reasons for their strikes.²⁴² Upon habeas review, the court found that Johnson had provided evidence that the prosecutor’s reasoning was pretextual, meaning the prosecution did not have non-racial reasons to strike potential Black jurors.²⁴³ “A black juror and a white juror shared similar characteristics; the prosecutor, relying on those characteristics, struck only the black juror.”²⁴⁴ However, the court ruled that this claim was procedurally barred and therefore denied relief.²⁴⁵



They should just take the [racist remark] out and shoot him behind the jail.





Mass Incarceration

The death penalty and mass incarceration are inherently connected. Oklahoma has the third highest overall incarceration rate, and the highest incarceration rate of women in the world.²⁴⁶ As with its death sentencing and execution practices, racial disparities are evident in Oklahoma's use of incarceration. Black Oklahomans are imprisoned at almost 5 times the rate that white Oklahomans are imprisoned.²⁴⁷ Long sentences in Oklahoma contribute to its high incarceration rates. In 2016, one in eight people imprisoned in Oklahoma were serving life or virtual life sentences. From 2003–2016, there was a 43% increase in the number of people serving life with parole sentences, and a 93% increase in life without parole sentences.²⁴⁸

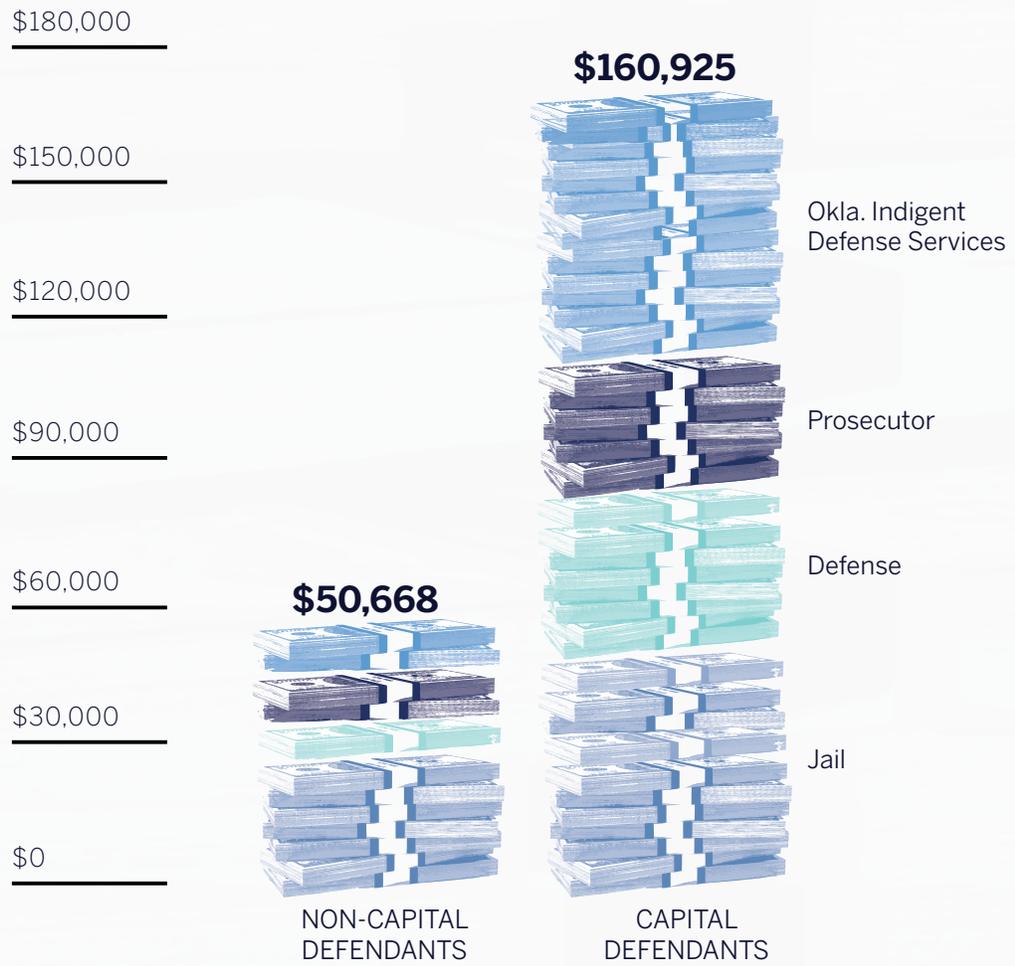
Long sentences are expensive, and death sentences are even more costly.²⁴⁹ Conservative estimates of death penalty costs in Oklahoma suggest the death penalty is three times more expensive than non-capital cases, not including the costs of incarceration after conviction.²⁵⁰ It costs nearly twice as much per person per day to incarcerate someone on death row in Oklahoma than housing them in

general population.²⁵¹ Given that these figures are conservative estimates, the true cost may well be higher. Data on cost differentials in fifteen states reveal that, on average, death penalty cases cost over \$700,000 more per case than non-capital cases.²⁵²

In addition to the high costs of incarceration, prisons are spending more money on elderly incarcerated people in order to address their health needs. Nationally, there are more people over the age of 55 in state prisons than people aged 18–24.²⁵³ Oklahoma incarcerates 72% more people over the age of 65 than the national average.²⁵⁴ People on death row contribute to graying prisons: people spend an average of 243 months—or over 20 years—on death row between sentencing and execution.²⁵⁵

The cost to incarcerate an elderly person can range from two to three times more than the cost to incarcerate a younger person.²⁵⁶ Research indicates these additional costs may be unnecessary because as people get older their likelihood of reoffending decreases.²⁵⁷

On average, death penalty cases in Oklahoma cost over three times more per case than non-capital cases.



Source: Oklahoma Death Penalty Review Commission Report, Appendix 1B.
Table 1: Average Cost Per Case: Main Cost Estimate Categories (2017 USD)

Native Americans and the Carceral State

Confinement has been a recurring element of U.S. policy directed at Native American nations.

Federally sponsored Indian boarding schools were one such form of confinement²⁵⁸ for most Native American children from 1819 until 1969.²⁵⁹ Nearly 83% of school aged Native American children were in boarding schools by 1926.²⁶⁰ The schools were funded using the “proceeds from the destruction of the Indian land base” which occurred through the Dawes Act.²⁶¹ These off-reservation boarding schools were intended to “kill the Indian, save the man”—or, in other words, assimilate Native American children. The federal government coerced parents into enrolling their children into assimilation schools by withholding rations and, in some instances, stealing children without parental consent.²⁶² The students were not permitted to leave²⁶³ the boarding schools where they endured physical, sexual, and emotional abuse; manual labor; and were forced to follow a rigid schedule that prescribed their activities for every minute of the day.²⁶⁴ An unknown number of Native American children died while attending the schools. A federal investigation of Indian boarding schools found over 50 marked or unmarked burial sites across the country.²⁶⁵ Oklahoma had the greatest concentration of boarding schools, and at least one school cemetery exists near Riverside Indian School in Caddo County.²⁶⁶

Other forms of confinement included keeping Native American people as prisoners of war, forcing them to stay on reservations, and institutionalizing them in asylums. During the Dakota War



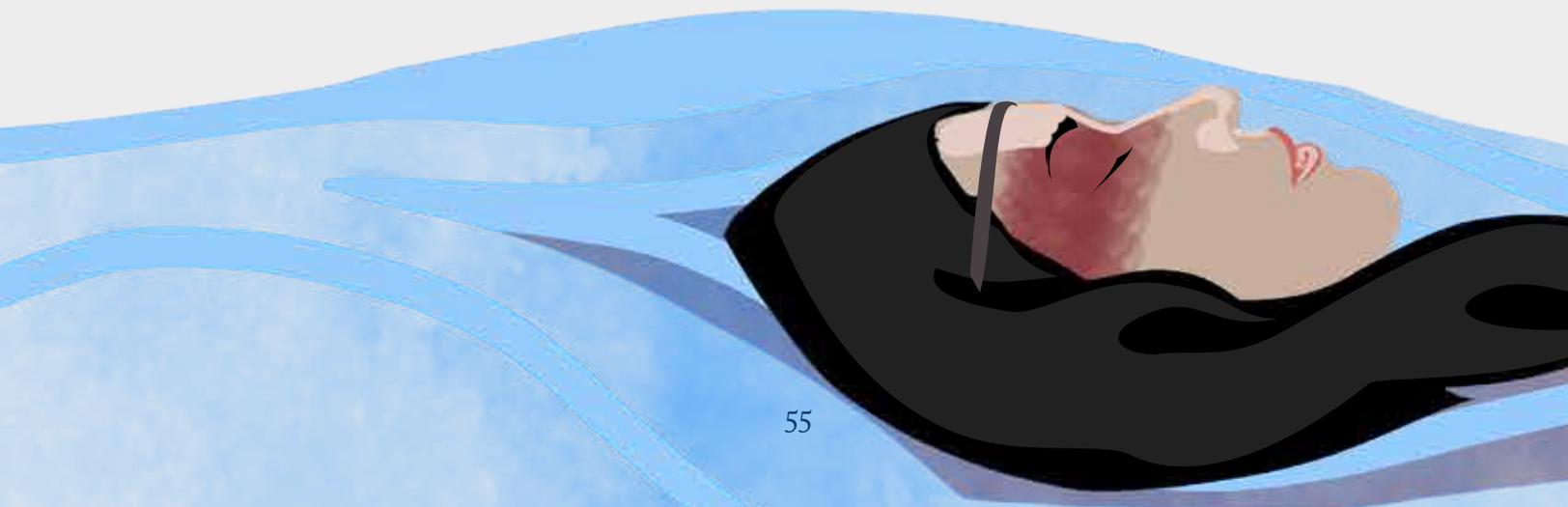
of 1862, the death penalty and incarceration operated in tandem. Dakota people in Minnesota resisting colonizers led to the largest mass execution in U.S. history: in 1862, the federal government hanged 38 Dakota people in front of 4,000 spectators.²⁶⁷ President Abraham Lincoln later justified the mass execution, saying that he was “[a]nxious to not act with so much clemency as to encourage another outbreak,” indicating the federal government used this mass execution to warn other Native American nations not to resist colonization.²⁶⁸ In addition to the men who were executed, another 265 Dakota men were incarcerated in a prison camp where they were leased out to farmers in Iowa.²⁶⁹

In the early 20th century, Native American people typically were not allowed to leave their reservations without permits and an outside sponsor who could testify to their reason for leaving.²⁷⁰ Additionally, those who did not properly conform to white societal standards were at risk of being institutionalized in asylums or sanitariums in the first half of the 20th century. Many Native American women who failed psychological examinations in these facilities were forcibly sterilized.²⁷¹

“Dear Sir: What about us? For the past ten years I’ve lived the biggest part of the time behind these walls of Oklahoma State Penitentiary. I look around and see about me Indians after Indians. A few more years in this Oklahoma institution I believe will no doubt look no diferent [sic] from an Indian Reservation. I am a first time loser. A person would think I am a criminal at heart and Soul. It’s not true. I am a Full Blood Indian . . . Why I am here?”

— Letter from an incarcerated Choctaw man to a Bureau of Indian Affairs official (1962) (published in Douglas K. Miller, *The Spider’s Web: Mass Incarceration and Settler Custodialism in Indian Country*, in *Caging Borders and Carceral States: Incarcerations, Immigration Detentions, and Resistance*, 393.)

Today, Native American people are incarcerated at more than two times the rate of white people in the U.S.²⁷² Oklahoma imprisons more Native American people than any other state and is second only to the federal Bureau of Prisons in the number of incarcerated Native Americans. One in ten people incarcerated in Oklahoma’s state prisons is Native American.²⁷³ These incarceration patterns are reflected in Oklahoma’s death sentences: Oklahoma has imposed 37 death sentences on Native American defendants, the most Native American death sentences in the country. Two people currently scheduled for execution, Clarence Goode, Jr. and Alfred Mitchell, are Native American men.²⁷⁴



Native American women and children are uniquely affected by incarceration. Native American women are incarcerated at the highest rate compared to women of other races in Oklahoma's prisons.²⁷⁵ Oklahoma is also the only state to have executed a Native American woman; Lois Nadean Smith, a Cherokee woman, was executed in December 2001.²⁷⁶ Nationally, Native American youth are incarcerated at a greater rate than white, Hispanic, and Asian youth combined.²⁷⁷ Native American youth who are arrested in Oklahoma are also more likely than any other race to be incarcerated.²⁷⁸

The preferential valuing of white victims discussed earlier also affects Native Americans. Tribal nations lack the jurisdiction to detain and prosecute non-Native American people who commit crimes on tribal land. As a result, non-Native Americans have been able to victimize tribal members—especially women and children—with minimal consequences for decades.²⁷⁹ The Department of Justice reports that non-Indians are responsible for the majority of rapes, murders, and assaults against women and children.²⁸⁰ These statistics do not account for the number of Native American women who go missing; in many instances, missing Native American women are unaccounted for in national statistics.²⁸¹ Mary Kathryn Nagle, an enrolled citizen of the Cherokee nation and attorney working on tribal sovereignty issues, argues *Castro-Huerta* (discussed previously) was an opportunity for the Supreme Court to restore sovereignty to protect women and children. Instead, the decision “flip[ped] federal Indian law on its head.”²⁸²



If we're going to have a lethal injection process, then we should follow best practices, ... and we make recommendations in our report as to what those best practices are. And, frankly, they are not what the Department of Corrections is currently utilizing.

— Former Oklahoma Governor Brad Henry, Discussions with DPIC podcast

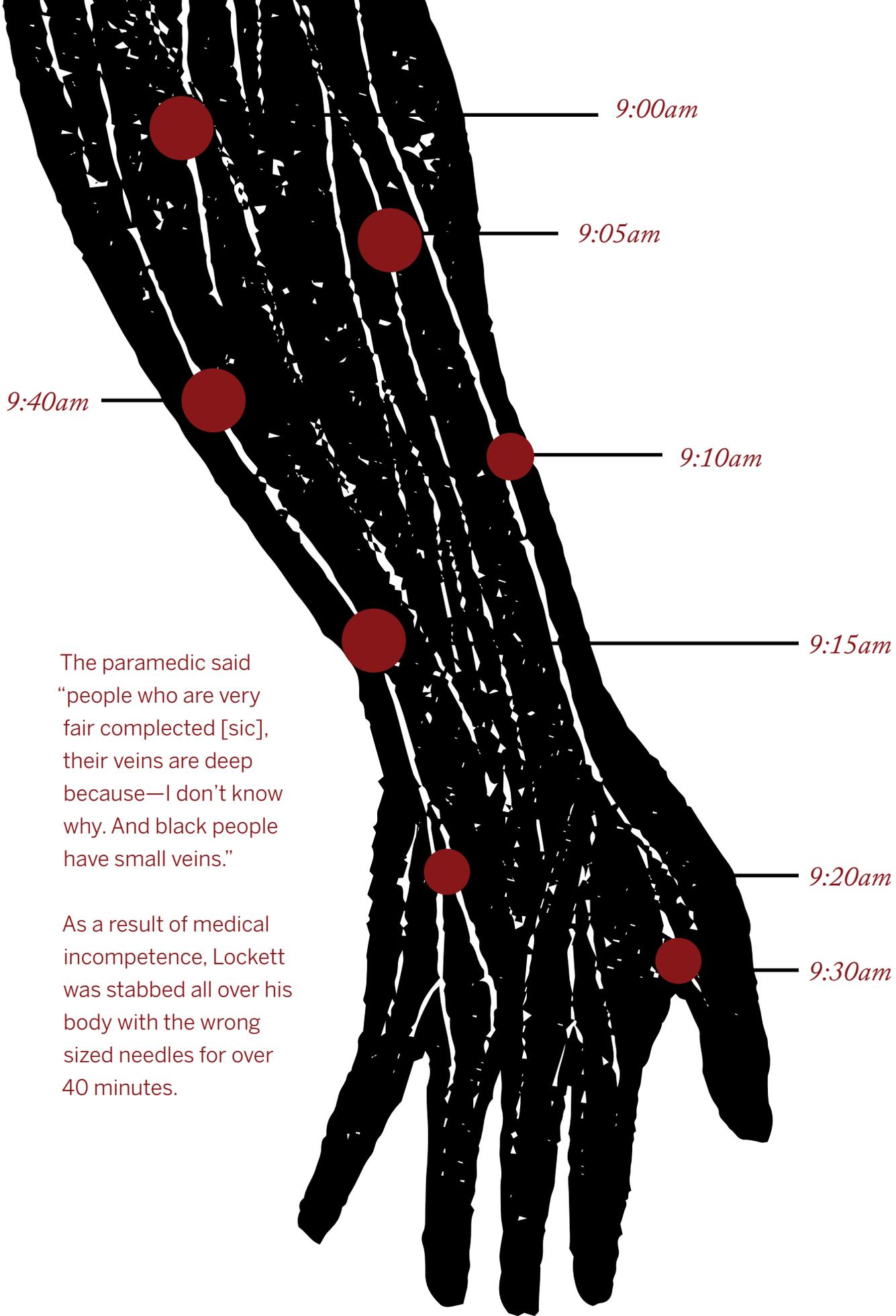


Botched Executions

Racial biases even affect the execution process in Oklahoma. Following the 2014 botched execution of Clayton Lockett, a Black man, the paramedic placing his IV revealed she held race-based medical misconceptions that impaired her ability to properly do her job. In explaining why she was unable to place an IV properly, the paramedic said “people who are very fair complected [sic], their veins are deep because—I don’t know why. And black people have small veins.”²⁸³ As a result of medical incompetence, Lockett was stabbed all over his body with the wrong sized needles for over 40 minutes.²⁸⁴ There have been at least three other botched executions in Oklahoma.²⁸⁵

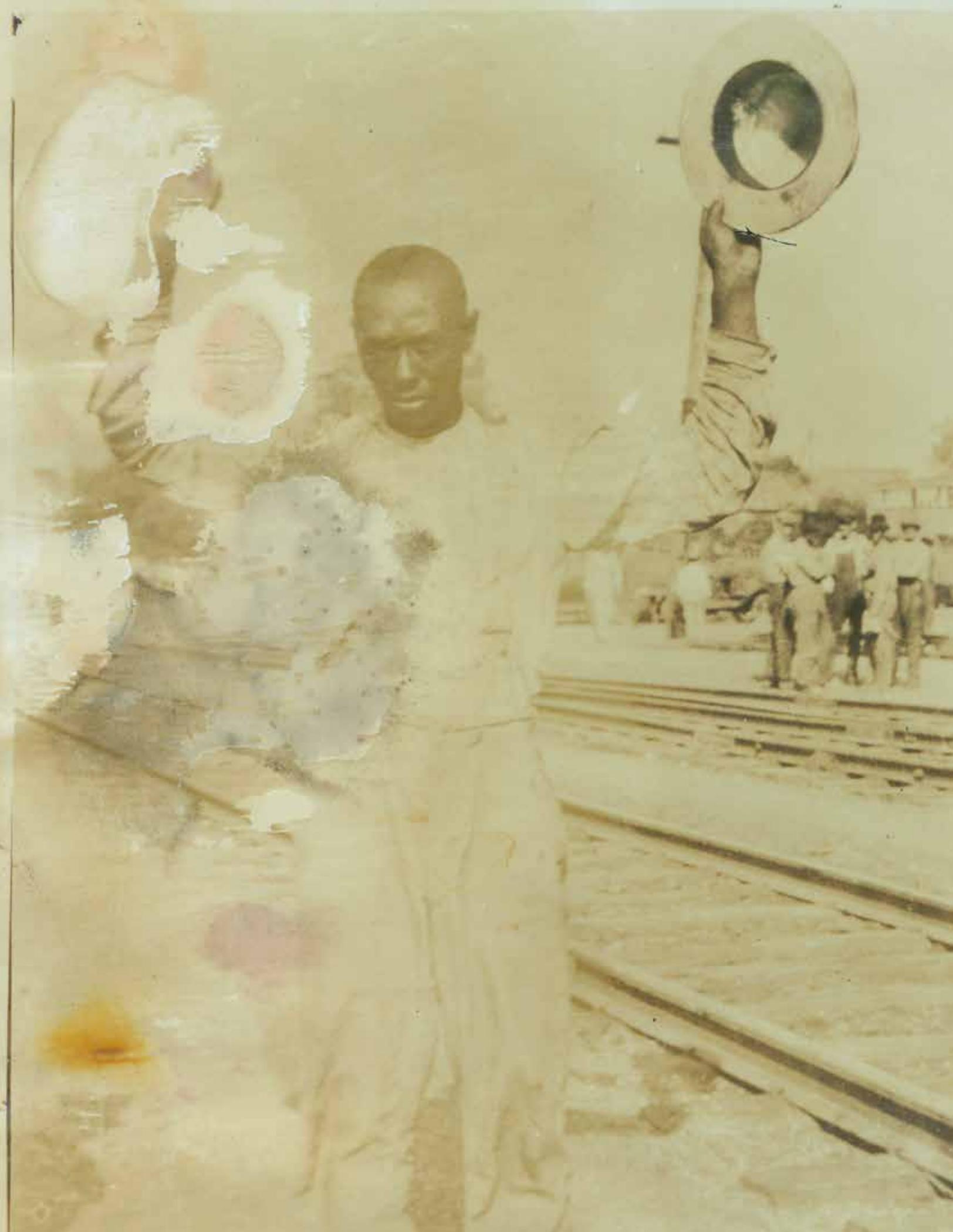
Executions were put on hold in Oklahoma for six years after a series of problems with the executions. A grand jury report released in 2016 described

procedural flaws in every step of the execution process leading up to Charles Warner’s 2015 execution. For example, after noticing at the last minute that they had received an unauthorized execution drug, the governor’s general counsel recommended the department of corrections violate procedures by continuing with the scheduled execution of Richard Glossip. The general counsel further advised that they should not disclose to the public that the wrong drug was used. The grand jury report found that corrections personnel’s “paranoia” about execution secrecy “caused administrators to blatantly violate their own policies.”²⁸⁶ While these violations were made public by the grand jury report, secrecy laws in Oklahoma continue to obscure from the public crucial facts about how Oklahoma conducts executions.²⁸⁷



The paramedic said “people who are very fair complected [sic], their veins are deep because—I don’t know why. And black people have small veins.”

As a result of medical incompetence, Lockett was stabbed all over his body with the wrong sized needles for over 40 minutes.



Conclusion

Oklahoma is at an inflection point in its administration of the death penalty. The state can continue executing people affected by what many Oklahomans consider a broken system or implement reforms that have been proposed by bipartisan advocates for years. A shift away from the death penalty may even be more aligned with Oklahomans' views on the issue, as recent surveys have shown a decline in support for the death penalty. In addition, more than half of Oklahomans surveyed in 2015 revealed they would support abolishing capital punishment if the state replaced the death penalty with the alternative sanction of life without parole, plus restitution.²⁸⁸

Systemic issues in the state's use of the death penalty affect all capital defendants. However, the impact is skewed based on the race of defendant and victim, and the effects are particularly harsh on defendants of color. People of color are more likely to be victims of police misconduct and violence; they are more likely to suffer from the effects of having all-white or nearly all-white juries; and they are at greater risk of being executed if they have intellectual disabilities. Additionally, the higher rate of death sentencing for cases involving white victims illustrates

the enhanced punishment for those accused of crimes against white people that has been evident since the heyday of lynchings. Despite documented problems with the administration of Oklahoma's death penalty, courts are largely unwilling to rectify them, leaving few options for relief. If Oklahoma is to establish a fair and humane system of justice, it is crucial to acknowledge and redress the lingering effects of Jim Crow and racial violence on the state's administration of the death penalty.

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